

MEMORANDUM ON THE POWER OF
CONGRESSIONAL COMMITTEES TO INVESTIGATE
THE CENTRAL INTELLIGENCE AGENCY

The National Security Act of 1947, 50 U.S.C. 401, et seq., (popularly referred to as the "Armed Forces Unification Act") established the Central Intelligence Agency, and prescribed its duties and functions. Section 403 (d)(3) of the Act specifically provides that "...the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure."

The key words to this provision are "unauthorized disclosure". The only logical interpretation of these words is that a disclosure is "unauthorized" when it has not been authorized by the Director, as he, and he alone, is in a position to determine whether intelligence sources and methods are involved. This provision strengthens and expands the powers which executive departments and agencies have historically been deemed to possess under the constitutional doctrine of separation of powers, even in the absence of a specific statute conferring these powers.

Although the issue has never been tested in the Courts, the political history of the United States contains numerous instances where the President and executive heads of departments have refused to furnish information to Congressional committees for reasons of public interest. On each occasion where the President has supported the departmental head's refusal to divulge confidential information, the papers and information have been withheld. This uniform result stems from the fundamental proposition that governs the interrelation of the three great branches of the Federal Government; that no one of the three has the power to subject either of the other two to its unrestrained will. Weighed against this, of course, is our fundamental theory of checks and balances. Where Congressional requests have been denied or politely turned aside, the explanation of public interest has invariably been given. Former President William Howard Taft said on this subject:

"The President is required by the Constitution from time to time to give to Congress information on the State of the Union, and to recommend for its consideration such measures as he shall judge necessary and expedient, but this does not enable Congress or either House of Congress to elicit from him confidential information which he has acquired for the purpose of enabling him to discharge his constitutional duties, if he does not deem the disclosure of such information prudent or in the public interest." William Howard Taft, Our Chief Magistrate and His Powers, p. 129.

The President and his departmental heads have in the past on occasion furnished classified information which the Congress sought. They have done so in a spirit of comity, not because of any effective

means to compel them to do so. It has become generally recognized that a subpoena duces tecum, issued by a Congressional committee to an executive head of department and calling for the production of testimony and records, need not be complied with if disclosure of contents would be detrimental to the public interest. As a practical matter, where the President has directed non-appearance, in response to the subpoena, the person summoned has so advised the committees or has appeared and claimed privilege.

Although Congress has by statute provided the organic legislation for certain executive departments and agencies and can by law change their duties, abolish them, or withhold their appropriations, it may not use legislative power to compel the heads of such departments or agencies to act contrary to what the President finds is in the public interest. The President is the judge of the interest involved and in the exercise of his discretion must be accountable to the country and his conscience. The executive branch of the Government is intended to assist him in the execution of his responsibilities.

There is annexed hereto as Appendix A. an historical summary of certain occasions where the legislative has sought confidential executive papers or information and has been refused.

Although there are no cases on the power of Congress to obtain classified information from the executive, there are many upholding the executive's right to withhold such information in suits by private parties. Appendix B. contains a summary of the more important of these cases.

In addition to the provision quoted above from the National Security Act of 1947, there are other statutory provisions relieving CIA of the reporting requirements imposed on other departments and agencies. Thus Section 7 of the Central Intelligence Act of 1949, 50 U.S.C. 403g specifically exempts the Agency from the requirement of furnishing personnel data for publication in the Official Register of the United States, and, in general, exempts the Agency from the provisions of all other federal "housekeeping" statutes requiring disclosure of organization, functions, and other personnel information. This Section reads as follows:

"In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 102 (d)(3) of the National Security Act of 1947 (Public Law 253, Eightieth Congress, first session) that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of sections 1 and 2, chapter 795 of the Act of August 28, 1935 (49 Stat. 956,957; 5 U.S.C. 654), and the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers

of personnel employed by the Agency: Provided, That in furtherance of this section, the Director of the Bureau of the Budget shall make no reports to the Congress in connection with the Agency under section 607, title VI, chapter 212 of the Act of June 30, 1945, as amended (5 U.S.C. 947 (b))."

To summarize, Congress has recognized the necessity of secrecy in the conduct of CIA's activities, has charged its Director with the responsibility of safeguarding such secrecy and has conferred upon him the necessary authority to do so. Even had Congress not taken such action, the Director would have the power, under the Constitution, to withhold any information which he considered to be an official secret of the executive branch.

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